

7

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being faxed to
Commissioner of Patents at (703) 305-1086 on this 16th
day of April, 2003.

Name: DAWN A. madisonSignature: Dawn A. Madison**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Craun, et al.

Serial No. 09/839,049

Filed: April 23, 2001

For: ODOR FREE POLYLACTIC ACID)
MODIFIED AQUEOUS EMULSION)
PAINTS FREE OF VOLATILE)
COALESCING ORGANIC SOLVENT)

Examiner: William K. Cheung

Group Art Unit: 1713

Attorney Docket No.: 10529

PETITION TO WITHDRAW HOLDING OF ABANDONMENT**BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE**

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicants received a Notice of Abandonment mailed from the United States Patent and Trademark Office on March 17, 2003. The Notice indicated that applicants failed to timely pay the required issue fee within the statutory period of three (3) months from the mailing date of the Notice of Allowance and that the issue fee had not been received.

Applicants never received a Notice of Allowance and payment of issue fee form for the captioned patent application. A search on the file wrapper for the captioned application and docket records has indicated that the Notice of Allowance was never received. A copy of the

docket record of the Legal Star Docket System for case 10529 which indicates the non-receipt is attached hereto in the Affidavit of Dawn A. Madison. Based on the foregoing and the enclosed Affidavit of Dawn A. Madison and in accordance with *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C., 1970), a copy of which is enclosed herewith, Applicant respectfully requests withdrawal of the Notice of Abandonment and re-issuance of the Notice of Allowance. In *Delgar* the court granted relief to the patent applicant where his attorneys failed to receive a notice of allowance, even though such notice had, in fact, been mailed by the Patent Office. Indicating that there was difficulty in determining whether notice of allowance was or was not received, the court interpreted the circumstances as constituting a rare situation to be accommodated. Therefore, the court deviated from the strict letter of § 151 in making its determination and issued another Notice of Allowance.

Respectfully submitted,



Kenneth J. Stachel

Attorney for Applicant

Reg. No. 27,722

The Glidden Company

925 Euclid Avenue

900 Huntington Building

Cleveland, Ohio 44115

(216) 344-8397

Doc. 10529

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Application No. 09/839,049)
)
Filed: April 23, 2001)
)
For: ODOR FREE POLYLACTIC ACID)
MODIFIED AQUEOUS EMULSION)
PAINTS FREE OF VOLATILE)
COALESCING ORGANIC SOLVENT)

Cleveland, OH 44115

April 16, 2003

VIA FACSIMILE (703) 305-1086
Commissioner of Patents and Trademarks
Washington, D.C. 20231

SUPPORTING AFFIDAVIT

STATE OF OHIO)
)
County of CUYAHOGA)

Duly sworn, I, Dawn A. Madison, state that:

1. I am a Paralegal for The Glidden Company, the assignee of the above identified U.S. Patent Serial No. 09/839,049.
2. I assist Glidden's Intellectual Property attorney with all matters before the U.S. Patent and Trademark Office.
3. My duties include opening all correspondence addressed to Glidden's attorneys, Thomas M. Schmitz (now retired) and/or Brian M. Kolkowski.

4. I docket any and all deadlines from Office Actions or other correspondence received into our docketing system, Legal Star system. I docket any and all deadlines in the attorney's docket calendar and also record the dates in our Legal Star electronic database.
5. I did not open, nor did I receive the Notice of Allowance indicated as sent in the Notice of Abandonment reportedly mailed November 5, 2001 for the captioned patent application.
6. I first became aware that a Notice of Allowance and the subject issue fee when we received the Patent Office's Notice of Abandonment mailed March 17, 2003.
7. Subsequent to that, I searched not only the file histories of application number 09/839,049, but those of related cases and found no indication that we received such notice.
8. Attached is a page for our Legal Star electronic database for the captioned patent application, Serial Number 09/839,049 with our matter number of 10529 and the last entry was that of the Examiner's Amendment of October 31, 2002.
9. If we had received the Notice of Allowance mentioned in the Notice of Abandonment of November 5, 2002, I would have made an entry in our Legal Star electronic database after the reply to office action mentioned above and appearing in the attachment. Since there is no entry shown in the attachment, no Notice of Allowance was received.
10. The Legal Star electronic database was instituted for our patent files around October, 2001, and this is why there is only two entries in the attachment for

matter number 10529 since those were the only actions for the captioned application since the installation of the Legal Star electronic database.

Further, affiant say naught.

Dawn A. Madison
Dawn A. Madison

Sworn to and subscribed in my presence this 16th day of April,
2003.

Carol A. McAlonis
Notary Public

CAROL A. McALONIS
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Comm. Expires Oct. 23, 2005

